



Senate

General Assembly

File No. 260

January Session, 2015

Substitute Senate Bill No. 911

Senate, March 26, 2015

The Committee on Labor and Public Employees reported through SEN. GOMES of the 23rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING CIVIL ACTIONS TO COLLECT PAST DUE PAYMENTS TO EMPLOYEE WELFARE FUNDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2015*) (a) For the purposes of
2 this section, "employee welfare fund" shall have the same meaning as
3 provided in subsection (i) of section 31-53 of the general statutes.

4 (b) Any payment to an employee welfare fund that is past due
5 under the terms of a written contract or rules and regulations adopted
6 by the trustees of such funds shall be considered wages for the
7 purpose of section 31-72 of the general statutes, as amended by this act.

8 (c) (1) Any sole proprietor or general partner, or officer, director or
9 member of a corporation or limited liability company, who fails to
10 make such payment when due to an employee welfare fund under the
11 terms of a written contract or rules and regulations adopted by the
12 trustees of such fund, or (2) any employee of a corporation or limited

13 liability company who has been designated by the corporation or
14 limited liability company to make such payment and who fails to make
15 such payment when due to an employee welfare fund shall be
16 personally liable in a civil action for payment of the amount due such
17 fund, as well as costs and reasonable attorney's fees.

18 Sec. 2. Section 31-72 of the general statutes is repealed and the
19 following is substituted in lieu thereof (*Effective October 1, 2015*):

20 When any employer fails to pay an employee wages in accordance
21 with the provisions of sections 31-71a to 31-71i, inclusive, or section 1
22 of this act, other than a sole proprietor or general partner against
23 whom a separate action has been brought in accordance with the
24 provisions of section 1 of this act for the same failure to pay wages, or
25 fails to compensate an employee in accordance with section 31-76k or
26 where an employee or a labor organization representing an employee
27 institutes an action to enforce an arbitration award which requires an
28 employer to make an employee whole or to make payments to an
29 employee welfare fund, such employee or labor organization may
30 recover, in a civil action, twice the full amount of such wages, with
31 costs and such reasonable attorney's fees as may be allowed by the
32 court, and any agreement between him and his employer for payment
33 of wages other than as specified in said sections shall be no defense to
34 such action. The Labor Commissioner may collect the full amount of
35 any such unpaid wages, payments due to an employee welfare fund or
36 such arbitration award, as well as interest calculated in accordance
37 with the provisions of section 31-265 from the date the wages or
38 payment should have been received, had payment been made in a
39 timely manner. In addition, the Labor Commissioner may bring any
40 legal action necessary to recover twice the full amount of unpaid
41 wages, payments due to an employee welfare fund or arbitration
42 award, and the employer shall be required to pay the costs and such
43 reasonable attorney's fees as may be allowed by the court. The
44 commissioner shall distribute any wages, arbitration awards or
45 payments due to an employee welfare fund collected pursuant to this
46 section to the appropriate person.

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| This act shall take effect as follows and shall amend the following sections: | | |
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|-----------|------------------------|-------------|
| Section 1 | <i>October 1, 2015</i> | New section |
| Sec. 2 | <i>October 1, 2015</i> | 31-72 |

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 16 \$ | FY 17 \$ |
|-------------------------------|--------------------------|-----------------|-----------------|
| All State Retirement Programs | Various - Potential Cost | See Below | See Below |

Municipal Impact:

| Municipalities | Effect | FY 16 \$ | FY 17 \$ |
|-----------------------|----------------|-----------------|-----------------|
| All Municipalities | Potential Cost | See Below | See Below |

Explanation

The bill may result in a cost to the state and municipalities, in the event the state fails to fully fund the state's annual required contributions (ARC) to the various retirement funds and the Other Post Employment Funds for retiree health benefits. Under current law, the state is required to pay 100% of the ARC for both the State Employees' and Teachers' Retirement Systems. The state requires the approval of the State Employees' Bargaining Agent Coalition (SEBAC) to pay anything less than the ARC, which if granted would eliminate a cause of action under the bill for employees' of the State Employee's Retirement System. The cost to the state and municipalities will be up to twice the amount owed, plus costs and attorney's fees.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 911*****AN ACT CONCERNING CIVIL ACTIONS TO COLLECT PAST DUE PAYMENTS TO EMPLOYEE WELFARE FUNDS.*****SUMMARY:**

This bill allows an employee to bring a civil action for an employer's past due payments to an employee welfare fund (i.e., a fund that provides healthcare, disability, or retirement benefits for the employee). The payment must be past due under a written contract's terms or the rules and regulations adopted by the fund's trustees. In such actions, the employee can be awarded up to twice the amount owed, plus costs and attorney's fees. Under the bill, the labor commissioner can also (1) collect the past due payments, plus interest or (2) bring a legal action to recover up to twice the amount owed, plus costs and attorney's fees. The bill applies to all employers; however, it appears that the federal Employee Retirement Income Security Act (ERISA) may preempt this provision from applying to private sector employers and employees (see BACKGROUND).

The bill also allows such an aggrieved employee to alternatively bring a civil action against (1) a sole proprietor or general partner, or officer, director, or member of a corporation or LLC who failed to make the required payment or (2) any employee of a corporation or LLC, who was designated to make the payment but failed. Under the bill, these people can be found personally liable for the amount due, plus costs and attorney's fees. It appears that ERISA may also preempt this provision from applying to private sector employers and their employees.

EFFECTIVE DATE: October 1, 2015

BACKGROUND

ERISA Preemption

ERISA is a federal regulatory scheme for private sector employee benefit plans. Among other things, it sets forth requirements for benefit plan funding and fiduciary duties and specifies the civil remedies available to address violations. In general, the U.S. Supreme Court has ruled that state laws providing alternative enforcement mechanisms to ERISA are preempted because they undermine Congress's intent to replace conflicting or inconsistent state and local regulations with a uniform body of federal law and regulation (see *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990)). The U.S. Second Circuit Court of Appeals also found that ERISA preempted a New York law that made corporate officers personally liable for a failure to contribute to an employee welfare fund (see *Romney v. Lin*, 94 F.3d 74 (1996)).

Because ERISA generally does not apply to public employers and their employees, ERISA preemption for the above reasons may limit the bill's applicability to public employers and employees.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 6 Nay 3 (03/12/2015)